

“LET’S TALK TEXAS”

Tips for International Businesses
Investing in the Lone Star State

SEPTEMBER 28 | 8:00-9:00 AM (CT)



Office of the Governor | Texas Economic Development & Tourism
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Adriana Cruz

Executive Director, Economic Development & Tourism
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What to know about taxes before investing in the United States

PENDAS
INTERNATIONAL PLLC

Ana-Barbara Llorente, CPA, ROAC
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1. General Comments: US Taxpayer

- ▶ Nonresident alien (Foreign Person) – Neither a U.S. citizen nor a U.S. resident alien
- ▶ Resident alien (US Person):
 - Greencard Test
 - Substantial Presence Test:
 - 31 days in the current year; AND
 - (1) # of days in the current year, plus
 - (2) 1/3 of # of days in first preceding year, plus
 - (3) 1/6 of # of days in second preceding year
 - > 183 days

2. Overview– Type of taxes

- ▶ Income Tax: 37% (Indiv.) and 21% (Corp.)
- ▶ Capital gain: 0%–15%–20% Indiv.
- ▶ Estate tax (18–40%)
 - Only for individuals
 - Exemption of \$60k
 - Only U.S. assets, as:
 - Real property in the U.S.
 - Shares in a U.S. Corp.
- ▶ Gift tax (18–40%)
 - Tangible property located in the U.S.
 - 15K annual exclusion

3. Tax Income Issues

▶ Planning

- Tax Treaties: credits, exemption, reduced rates or other benefits
- Income Tax: 37% (Indiv.) and 21% (Corp.)
- Different Structures:
 - LLC
 - C-Corporation
 - Partnership

3. Tax Income Issues (cont'd)

- ▶ The U.S. taxes foreign persons on two types of income:
 - Income “effectively connected” with a U.S. business (ECI)
 - Business in the US
 - Normal rates– net basis
 - Fixed, determinable, annual or periodical income (FDAP)
 - Interest, dividends, rents, royalties
 - Flat rate 30% – tax treaties

4. Compliance Requirements

- ▶ Individual Return: 1040 NR
- ▶ Companies Return: 1120– F
- ▶ Other Forms: (for example)
 - Form 5472: 25% Foreign–Owned U.S. Corporation
 - Form 5471: U.S. Persons With Respect to Certain Foreign Corporations
- ▶ Note that if a foreign person is engaged in a U.S. trade or business, a return is required even if it did not earn any income from that activity



Trade and Investment in the U.S.A: Legal Aspects



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I. Introduction

Differences between the Roman/civil system and English system usually called “common law ”

- Case Precedents
- Jury
- Formality versus Reality



II. Investment and Trade in the United States present several opportunities to foreign investors

- Open and transparent legal system
- Availability of capital
- Activity and trade flow
- The private sector and the public sector are strong and active



III. Risks must be analyzed and mitigated

- Differences between the legal systems of Mexico and the United States
- Lack of planning on legal, tax and immigration areas
- Commercial risk and payment
- Lack of use of resources and services offered by chambers and public sector resources



IV. Formation of Entities (Companies) and Corporate Law in America

- Regulated by state law and authorities, not federal law
- Texas, Delaware and Nevada are popular jurisdictions



V. Forms of Business Entities

- Partnership – contract between partners – not an entity, and partners personally responsible
- Corporation – issues shares
- Limited Liability Company (L.L.C.) – owned by “members”
- Limited Partnership (L.P.) – one general partner with full responsibility and one or more limited partners with limited responsibility



VI. Characteristics of U.S. Entities

- Name Designation and Reservation
- Minimum Capital:
 - defined by agreement between the shareholders/partners
- Number of Shareholders/Members
 - unlimited or by agreement
- Administration



VI. Characteristics of U.S. Entities (Cont'd)

- Domicile
- Variations of Capital
- Acts of Shareholders/Members and Directors/Managers
 - Unanimous Written Consent
- Powers and Authority/Faculties
- Corporate Purpose



Passport to Success

FOSTER
US & Global Immigration Services

John W. Meyer, Partner
Foster, LLP

A Foster LLP Presentation



The Best Temporary Visas for Professionals and Investors

- B-1 Visa waiver for business visits.
- L-1A and L-1B for executives, managers, and professionals.
- E-1 for Treaty Traders.
- E-2 for Treaty Investors.
- TN for Canadian/Mexican professionals.
- H-1B for professionals.



Impact of COVID-19



- US embassies/consulates around the world have generally been closed. We anticipate that they will be reopened soon
- US borders between Canada and Mexico remain closed to non essential visitors.
- National Interest Exception (NIE)
- Future Presidential proclamations.

B-1/Visa Waiver for Business Trips

- Allows visits to the USA to hold any type of meetings, conduct business negotiations, sign contracts, create a company, purchase a house or an asset.
- You are not allowed to work in the USA.
- You are not allowed to collect a salary in the USA.
- Requires the visitor to have a firm intent to return to his country of origin.

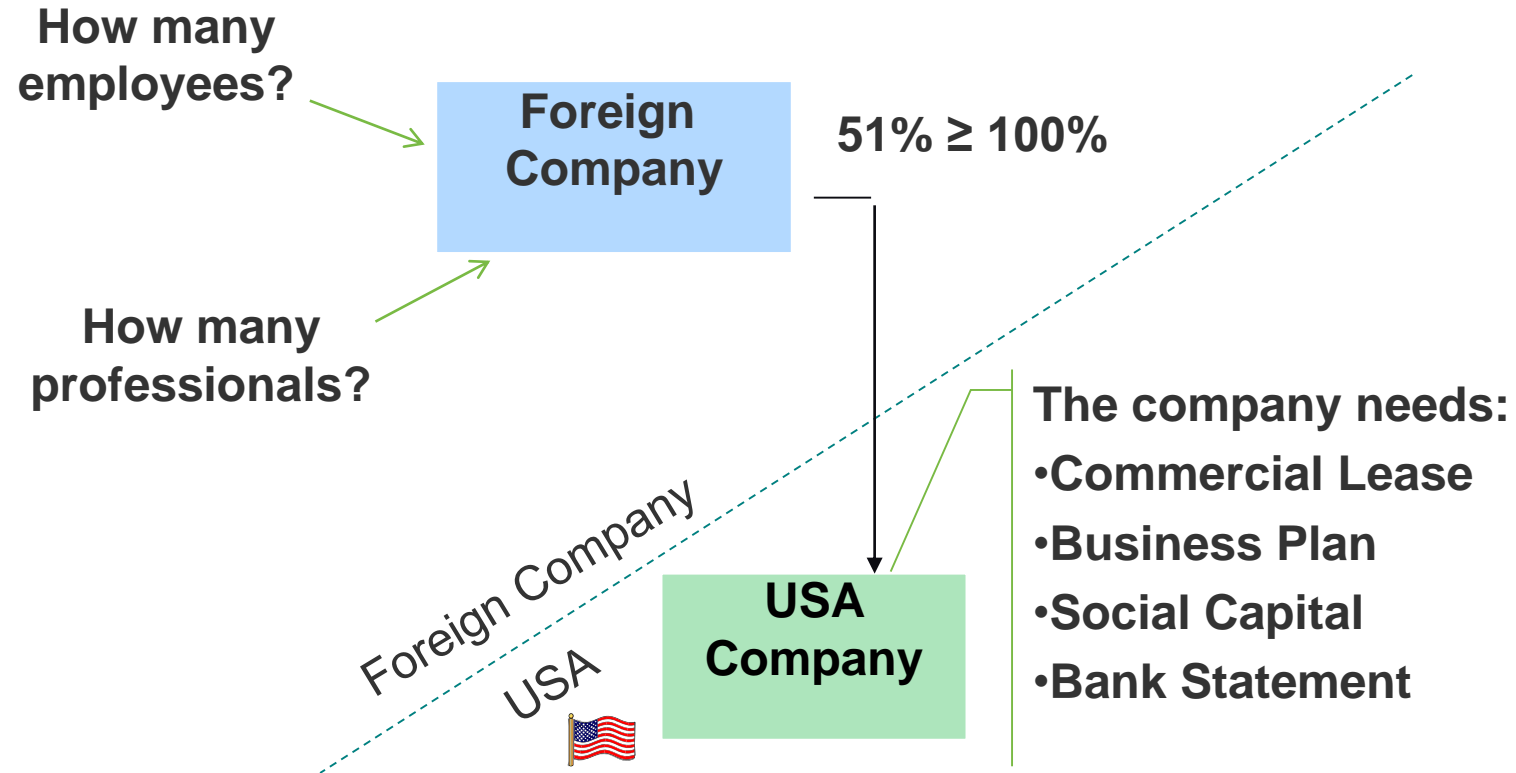


L-1 Visa for Intra Company Transfer or to Open a New Office

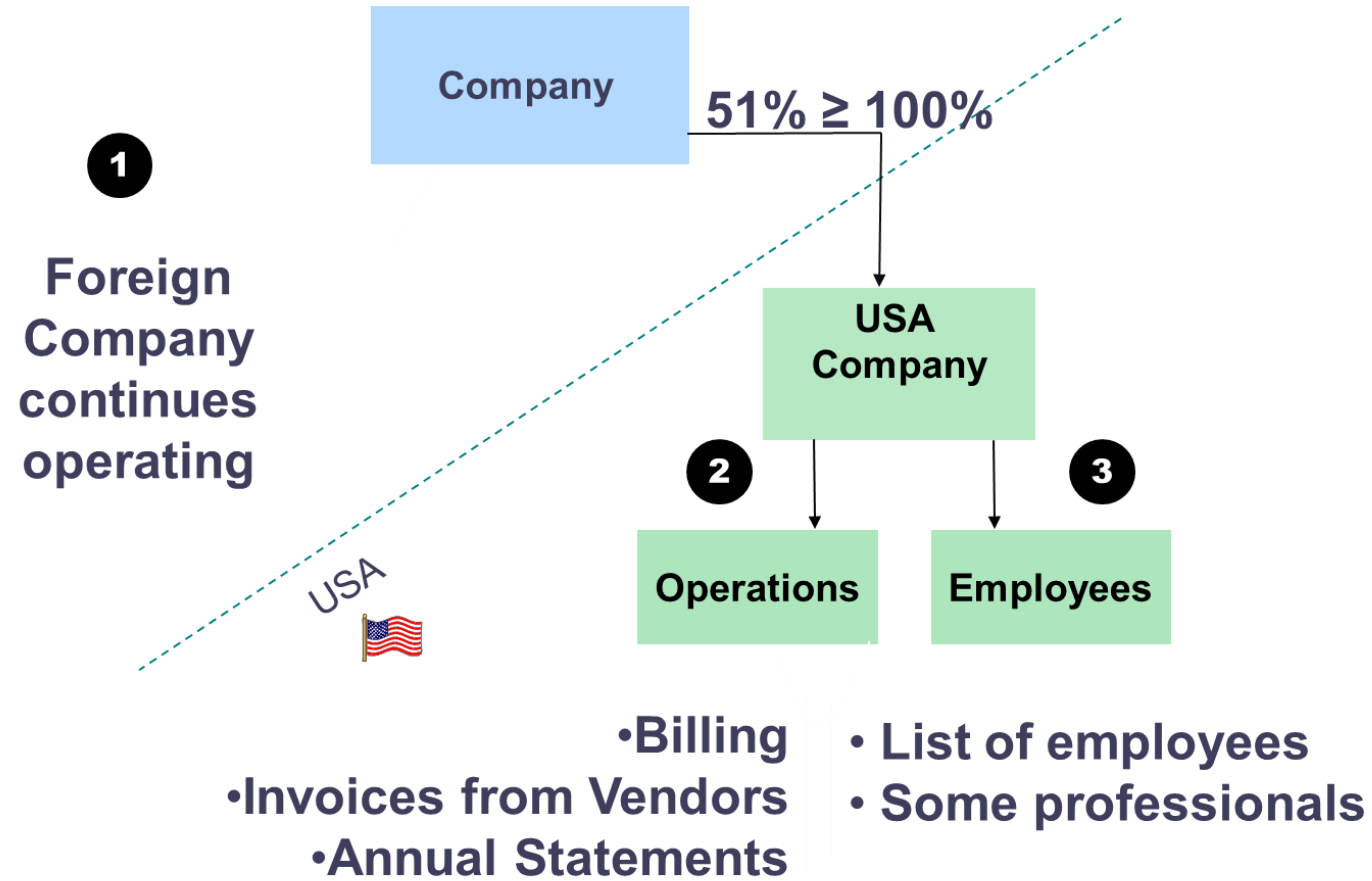
- Allows the transfer of executives, managers, or specialized employees within the same group of companies.
- The employee has to have been employed for one year in the last three years with the company- outside of the US.
- Requires employee to be working full time.
- The L1 visa for new offices can be issued for one year.
- Duration: up to 7 years for executives and managers; up to 5 years for specialized workers.
- The L1 visa for executives / managers works well with the permanent residence.



L-1A Transfers Between Companies



Requirements to Extend The L-1A Visa



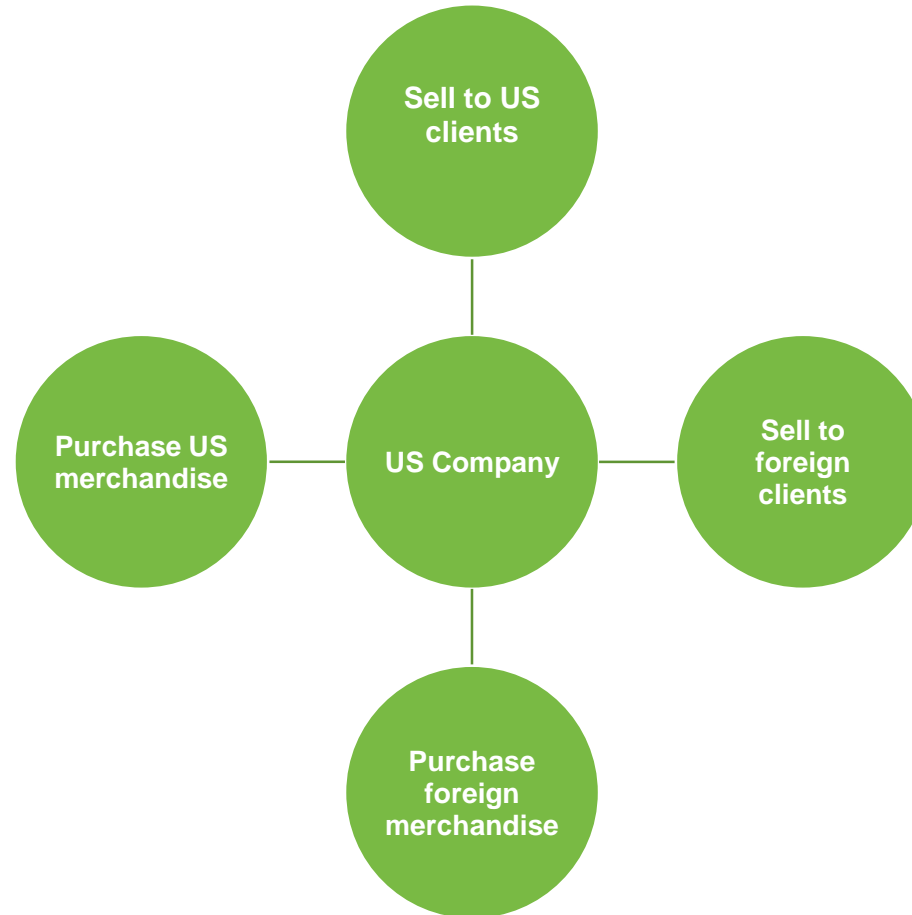
E-1 Treaty Trader Visa

- The E-1 allows Treaty Nationals to conduct business between the USA and the Treaty Country.
- The Visa category is created based on a Treaty between the US and another country (such as United Kingdom, France, Canada, Mexico, etc.)
- The trade must be significant (in \$), and mainly between the USA and Treaty Country.
- Covers trade in goods, services and/or technology.



E-1 Treaty Trader

Substantial Trade between
United States and Foreign
Country
\$500,000/year or more

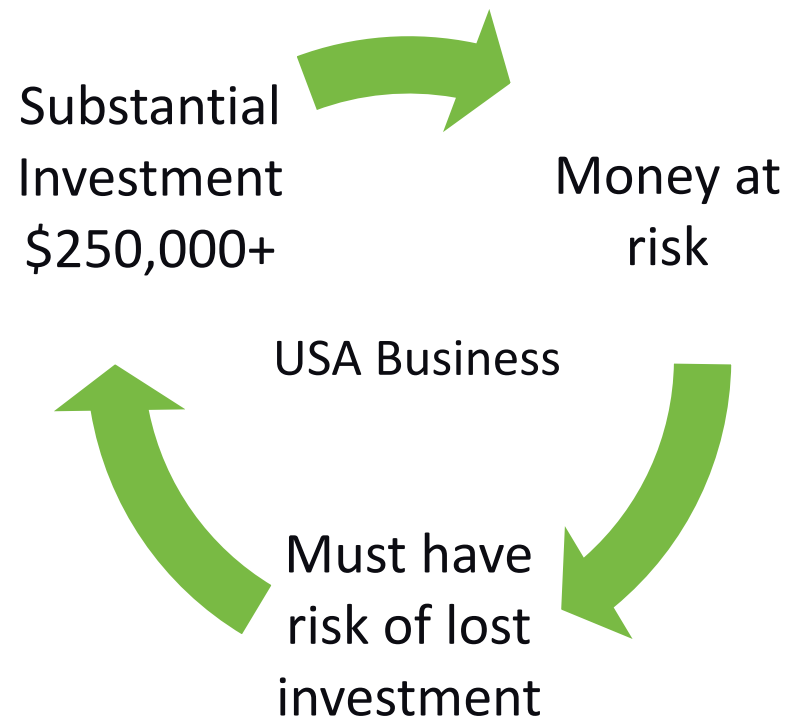


E-2 Treaty Investor Visa

- The E-2 Visa allows Investors to invest in a business of their choice in the USA.
- The Visa category is created based on a Treaty between the US and another country (such as United Kingdom, France, Canada, Mexico, etc.)
- The investment has to be:
 - significant,
 - in money, equipment or attributable assets, and
 - in an operating business or one that is about to start its operations.



E-2 Treaty Investor Visa



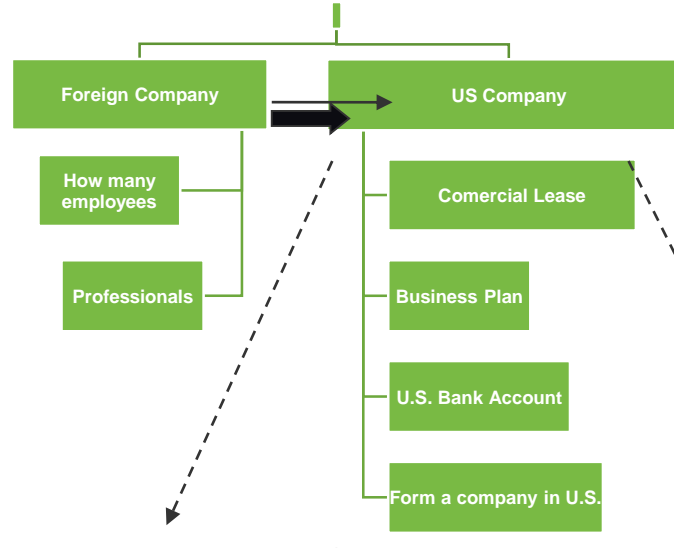
No risk exists:

- Money in the bank
- Money in Stock Market
- Passive Investment

E-1 & E-2: Similarities

- Most of the business capital has to be owned by Treaty Nationals.
- Allows the Treaty National to obtain a visa to manage his business.
- Allows the issuance of E-1 or E-2 visa for executives, managers or essential employees so that they may work for the company in the USA, as long as they are nationals of the Treaty Country.
- The petition may be presented to the Immigration Service in the USA or directly at the US Embassy/Consulate.

1 year L-1



2 years
Option A
E-1 Treaty Trader



2 years
Option B
E-2 Treaty Trader



TN Visa for professionals

- The USMCA allows visas for Canadian and Mexican professionals.
- The list in the treaty is limited to certain professions
- For example: attorneys, accountants, engineers, architects, economists and chemists.
- Generally, applicants must have a 4 year university degree.
- There is no limit on the issuance of the visa (but there is a practical limit).
- Applications may be made at the US Embassy/consulate or change status in the US.

H-1B Visa for Professionals

- The most popular visa for professionals .
- Requirements:
 - Specialized professions or careers that are related to a specialized profession (accounting; journalism; engineering)
 - Bachelors Degree or equivalent (based on work experience)
 - Duration up to 6 years (3 years, then another 3 years).

Benefits for the Family

- The E1/E2/L-1 /H-1B/ TN visas allows the spouses and single children under 21 to live and study with the worker in the USA.
- The E1/E2/L-1 visas allow the spouses to be eligible for a work permit issued by the Immigration Service.
- The E1/E2/L-1/H-1B/TN visas have the benefit of allowing to request a B1 visa for a nanny to work at their home in the USA.

The Best Temporary Visas for Professionals and Investors

- B-1 Visa waiver for business visits.
- L-1A and L-1B for executives, managers, and professionals.
- E-1 for Treaty Traders.
- E-2 for Treaty Investors.
- TN for Canadian/Mexican professionals.
- H-1B for professionals.





The background of the top half of the image features a network of white question marks of various sizes connected by dotted lines. A white silhouette of the state of Texas is positioned in the center, overlapping the largest question mark. The entire background is a solid blue color.

QUESTIONS & ANSWERS





Contact Information & Resources





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US & Global Immigration Services



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Email: business@gov.texas.gov
- **International Business Webinar**
<https://gov.texas.gov/business/page/international>
Slides available here within 48 hours
- **How to Start a Business in Texas**
<https://gov.texas.gov/es/business/page/start-a-business>
- **Event Calendar**
<https://gov.texas.gov/es/business/events>



Online Resources

Texas Secretary of State Office

Website: www.sos.state.tx.us

Phone: 512.463.5555 | Monday to Friday, 8:00am-5:00pm, Central Time

- Start a Business <https://www.sos.state.tx.us/corp/business-startup.shtml>

Texas Comptroller of Public Accounts

Website: comptroller.texas.gov

Phone: 800.252.7875 | Monday to Friday, 8:00am-5:00pm, Central Time

- [Sales and Use Tax](#) pages or call 800-252-5555
- [Franchise Tax](#) pages or call 800-252-1381
- [Out of State Sales Tax](#)
- [Tax Training Resources](#) for other helpful resources

THANK YOU



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